**Archer Daniels Midland Company, Employer-Petitioner *and* Bakery, Confectionary, Tobacco Workers and Grain Millers, International Union, Local Union No. 16G. Case 17–UC–230**

March 26, 2001

ORDER DENYING REVIEW

BY CHAIRMAN TRUESDALE AND MEMBERS LIEBMAN AND WALSH

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has considered the Union's request for review of the Regional Director's Decision, Order, and Clarification of Bargaining Unit (pertinent portions are attached as an appendix).[1] The request for review is denied as it raises no substantial issues warranting review.[2]

APPENDIX

DECISION, ORDER, AND CLARIFICATION OF BARGAINING UNIT

The Employer-Petitioner, Archer Daniels Midland Company, a Delaware corporation, with corporate headquarters in Decatur, Illinois, is engaged in the production and processing of agricultural products. The Employer-Petitioner operates a soybean processing plant (processing plant) at 200 W. 19th Avenue, North Kansas City, Missouri, and a soybean oil refinery (refinery) at 80 W. 18th Avenue, North Kansas City, Missouri. The record establishes that the Employer-Petitioner is engaged in commerce within the meaning of the Act, and it will effectuate the purposes of the Act to assert jurisdiction herein.

The Union, Bakery, Confectionery, Tobacco Workers and Grain Millers, International Union, Local Union No. 16G, is a labor organization within the meaning of Section 2(5) of the Act and is recognized as the collective-bargaining representative for employees employed by the Employer-Petitioner at its processing plant described above

The current collective-bargaining agreement contains a recognition clause in article 1, section 1.01 that describes the bargaining unit as follows:

> [A]ll production and maintenance employees employed at the Company's plant located at 200 West 19th Avenue, North Kansas City, Missouri, excluding office employees, office janitors, laboratory room employees, buyers, salesmen, guards, professional employees and supervisors as defined in the National Labor Relations Act, as amended.

The Employer-Petitioner seeks to clarify the existing bargaining unit by excluding from the unit all employees employed at its refinery facility located at 80 W. 18th Avenue, North Kansas City, Missouri.

Bargaining History

The Union has represented the production and maintenance employees employed at the processing plant located at 200 W. 19th Avenue, North Kansas City, Missouri, for over 30 years. The Union's representation of these employees predates the Employer-Petitioner's ownership of the processing plant and has continued through a 1969 change in the processing plant from a flour mill to a corn mill, and the 1978 change from a corn mill to a soybean mill.

The Employer-Petitioner has owned and operated the processing plant at 200 W. 19th Avenue, North Kansas City since at least 1988, and has been signatory to successive collective-bargaining agreements with the Union covering the bargaining unit. The initial collective-bargaining agreements between the parties contained recognition clauses that described the bargaining unit in terms of general production and maintenance job classifications and exclusions but did not include the address of the processing plant. During the 1994 contract negotiations, the parties agreed to incorporate the address of the processing plant, 200 W. 19th Avenue, into the contractual recognition clause. It appears that there was little, if any, discussion during the 1994 contract negotiations regarding the inclusion of the address in the recognition clause. When the address was added to the recognition clause in 1994, the refinery was not in existence and there were no plans to add a refinery or any other operation at the 200 W. 19th Avenue location. The description of the bargaining unit quoted above has been incorporated into each successive collective-bargaining agreement from 1994 to the present without discussion. The apparent purpose of the 1994 addition of the processing plant address to the recognition clause was to distinguish the processing plant bargaining unit located at 200 W. 19th Avenue from a second bargaining unit, comprised of employees employed by the Employer at a flour mill located in North Kansas City, which was also represented by the Union.

On August 11,1999, when the refinery was under construction, a grievance was filed asserting that the Employer breached the then current collective-bargaining agreement by not permitting the processing plant bargaining unit employees to bid upon job positions in the refinery. The grievance was denied by the Employer at the third step of the grievance procedure in late 1999. Although at hearing the Union referred to this grievance as currently "pending," it is not clear what, if any, action was taken on the grievance after the Employer-Petitioner denied the grievance in late 1999. The current collective-bargaining agreement, which was effective July 1, 2000, was negotiated after the refinery began operation in January 2000. However, there is no evidence regarding whether the placement of the refinery employees was discussed during the recent contract negotiations.

[1] The issue raised in the request for review was whether the Regional Director erred in refusing to extend the holding of the *The Sun*, 329 NLRB 854 (1999), to the facts of this case in which the unit was described as "all production and maintenance employees employed at the Company's plant located at 200 West 19th Avenue, North Kansas City, Missouri" and thereby improperly clarifying the unit to exclude the new refinery employees from the existing bargaining unit.

[2] In denying review, we do not rely on the Regional Director's statement that *The Sun*, supra, does not apply to this case because there is no transfer of bargaining unit work to job classifications outside of the bargaining unit. Rather, we rely on the Regional Director's finding that *The Sun* does not apply because the bargaining unit at issue is not functionally described.

Finally, in a similar case, Case 18–UC–330, issued on August 7, 1998, the Regional Director for Region 18 of the National Labor Relations Board declined to include employees in the Employer-Petitioner's newly constructed soybean oil refinery in Mankato, Minnesota, in the existing bargaining unit of employees employed in the Employer-Petitioner's soybean processing plant in Mankato, finding that the employees in the refinery constituted a separate appropriate unit and that the refinery employees should not be accreted into the existing bargaining unit.

Processing Plant

The processing plant at 200 W. 19th Avenue consists of several buildings, storage tanks and elevators, and loading and unloading areas that are adjacent to a series of railroad spurs that service the facility. Rick Benware is the plant manager of the processing plant. There are currently 32 employees in the bargaining unit of employees employed at the processing plant. These employees work in one of five departments: extraction, elevator, meal and oil, general plant, and maintenance.

The current function of the processing facility is to process raw soybeans into three products: soybean meal (animal feed), soybean hull pellets, and crude soybean oil. The approximate percentage mix of final product is: 80 percent meal, 14-percent crude soybean oil, and 6-percent soybean hulls. None of the three final products is fit for human consumption. Raw soybeans are received at the processing plant and are processed in the preparation building where the beans are cleaned, dried, cracked, de-hulled, and flaked. The flakes are then further processed in the extraction building where solvent is used to remove soybean oil from the flakes. A byproduct from the extraction process includes meal which is sent back to the preparation building to be ground into particles. The soybean meal and soybean hull pellets are shipped in bulk by railcar to other facilities to be packaged or processed further. Currently, all of the crude soybean oil produced at the processing plant is piped from the processing plant to the refinery for further processing. Prior to the time that the refinery was built, the processing plant shipped all of the crude soy bean oil it produced to soy bean oil refineries operated by the Employer-Petitioner at other locations or to refineries operated by the Employer-Petitioner's competitors. Employees at the processing plant have never been engaged in the function of refining crude soybean oil.

Refinery

Construction of the refinery began in April 1998, and was complete by January 2000. Operation of the refinery began in late January 2000. The refinery includes a large building, storage and loading facilities, and two railroad spurs. The refinery is located immediately to the west of the processing plant. The site currently occupied by the refinery was at one time occupied by storage tanks that were part of the processing plant. However, the storage tanks were demolished about 20 years ago and the land remained vacant until the refinery was built. Access to the refinery is from 18th Avenue, and its address, 80 W. 18th Avenue, was created at the time the refinery was built.

Eric Lightner is the plant manager of the refinery. Lightner reports to Jerry Mayfield, who is in charge of the edible oils division at the Employer-Petitioner's corporate office in Decatur, Illinois. There are approximately 12 production and maintenance employees employed at the refinery.

The refinery processes crude soybean oil into salad oil for human consumption. Approximately 75 to 85 percent of the crude soybean oil currently processed at the refinery comes from the soybean processing facility located at 200 W. 19th Avenue. The additional 15 to 25 percent of crude soybean oil processed at the refinery is obtained from the Employer's soybean processing plants in Mexico, Missouri, and Fredonia, Kansas. The refinery is designed to process 25 to 40 percent more oil than the processing plant can produce at its full capacity. A byproduct of the refining process is soap stock, which is returned to the processing plant to be added to the soybean meal to enhance the nutritional value of the animal feed.

Community of Interest/Functional Intergration

The processing plant and the refinery are connected by a catwalk that runs between the two facilities. In addition, there are pipes running between the facilities to transport crude soybean oil from the processing plant to the refinery. The processing plant also provides some steam to the refinery for use in running the machinery in the refinery.

The soybean processing plant and the refinery are separate profit and loss centers. Records are kept of the products transferred between the two facilities and the facility receiving the product is charged for it. The processing plant and the refinery are assigned separate location codes by the Employer-Petitioner, have separate mailing addresses and post office boxes, and are considered to be on separate parcels of land for insurance and real estate tax purposes. The processing plant and the refinery have separate utility service including separate electricity, gas, water, and sewer systems. The processing plant and the refinery have separate personnel departments and purchasing departments. The products produced by the processing plant are sold by merchandisers located in an office at the processing plant. The product produced by the refinery is marketed and sold through offices at the Employer-Petitioner's headquarters in Decatur, Illinois. Production, personnel, and payroll records for the processing plant and the refinery are separate, with these functions performed by separate staffs and maintained at separate locations.

The initial job classifications, wage structure, and work rules in effect at the refinery were established by refinery Plant Manager Lightner without input from processing plant supervisory or management personnel. Lightner also hired the initial staff to work at the refinery. Only one processing plant employee applied for work in the refinery when the refinery began operation. This individual was informed that the operations were separate, and that seniority accrued in the processing plant bargaining unit would not transfer to the refinery. In any event, the individual was not offered a job position in the refinery. There have been no instances of transfers or interchange of employees between the soybean processing facility and the soybean oil refinery either on a permanent or on a temporary basis. There are no occasions where an employee hired at one of the facilities was later hired to work at the other facility.

The facilities have separate management at all levels, including the divisions at corporate headquarters to which they report. The two facilities maintain separate personnel departments. Each facility hires its own employees, has its own job classifications, and maintains its own personnel records at its facility. The facilities do not share support staff and perform quality control functions independently. The facilities have separate computer systems. Employees at the processing plant and at the refinery have separate parking lots, separate breakrooms, and punch separate timeclocks. There are no common facilities or areas that are used by employees of the processing plant and the refinery. Work rules prohibit processing plant employees from entering the refinery and refinery employees are similarly prohibited from entering the processing plant premises.

The machinery and equipment used in the processing plant is different from the machinery used in the refinery. Operation of the machinery used at both facilities requires on-the-job training of several weeks. Although the overall skills used in the two operations are similar, employees cannot be interchanged between the two facilities because the machinery used in the two facilities is different, the machinery requires specific training of a minimum of 2 to 4 weeks, and employees are not cross-trained to work on machinery and equipment other than what is used in their facility. Processing plant employees and refinery employees do not work side by side or have any work contact. An employee of the processing plant may unload shipments of crude soybean oil arriving from sources other than the processing plant to be processed at the refinery.

The employees at the two facilities are subject to separate wage structures, terms and conditions of employment, work schedules, and work rules. Moreover, because the refinery produces a product for human consumption, the refinery is subject to work rules and standards of cleanliness imposed both by the Employer-Petitioner and by outside agencies to ensure product quality that are not in effect at the processing facility. For example, refinery employees are forbidden to eat on the work floor, may not bring certain foreign objects into the work area, and are required to wear uniforms. Employees at the processing facility are not subject to similar restrictions and do not wear uniforms.

## Analysis

### 1. Applicable legal standard for accretion

It is the Union's position that the refinery employees must be accreted to the established processing plant unit. Contrary to the Union, the Board has followed a restrictive policy in finding accretions to existing units because the Board seeks to insure that the right of employees to determine their own bargaining representatives is not foreclosed. In *United Parcel Service,* 303 NLRB 326, 327 (1991), the Board summed up its "restrictive (accretion) policy" as follows:

> One aspect of this restrictive policy has been to permit accretion only in certain situations where new groups of employees have come into existence after a union's recognition or certification or during the term of a collective-bargaining agreement. If the new employees have such common interests with members of an existing bargaining unit that the new employees would, if present earlier, have been included in the unit or covered by the current contract, then the Board will permit accretion in furtherance of the statutory objective of promoting labor relations stability . . . The limitations on accretion . . . require neither that the union have acquiesced in the historical exclusion of a group of employees from the existing unit, nor that the excluded group have some common job-related characteristic distinct from the unit employees . . .

Similarly, in *Melbet Jewelry Co.,* 180 NLRB 107 (1970), the Board held:

> We will not . . . under the guise of accretion, compel a group of employees, who may constitute a separate appropriate unit, to be included in an overall unit without allowing those employees the opportunity of expressing their preference in a secret election or by some other evidence that they wish to authorize the Union to represent them.

In determining whether new employees share a community of interest with employees of an existing bargaining unit, the Board weighs various factors including: integration of operations, centralization of management and administrative control, geographical proximity, similarity of working conditions, skills and functions, common control of labor relations, collective-bargaining history, and interchange of employees. *Progressive Service Die Co.,* 323 NLRB 183 (1997). Employee interchange and common day-to-day supervision are the two most important factors. *Towne Ford Sales*, 270 NLRB 311 (1984); *New England Telephone & Telegraph Co.,* 280 NLRB 162 (1986).

Contrary to the assertion by the Union, the Board's established approach to the type of accretion issues raised herein has not been overruled by the Board's recent decision in *The Sun,* 329 NLRB 854 (1999). *The Sun* case involved the transfer of traditional bargaining unit work to newly created job classifications outside the bargaining unit, a crucial circumstance in that case that is not present in the instant case. *The Sun* did not reverse established Board law holding that there is a rebuttable presumption that employees at a new facility constitute a separate appropriate unit. See *Gitano Distribution Center,* 308 NLRB 1172 (1992); *Passavant Retirement & Health Center*, 313 NLRB 1216 (1994). In contrast to the facts in *The Sun,* the instant case involves the placement of employees at *a new facility who perform work that was never performed by employees in the existing bargaining unit*. In addition, the Union's reliance upon *Sun* as governing all "unit clarification proceedings involving bargaining units defined by the work performed" or "functionally" described bargaining units is misplaced because the bargaining unit herein does not appear to be functionally described. Specifically, the existing bargaining unit is not described or defined by the functions performed within the processing plant, i.e., the processing of soybeans into meal, fiber, and crude soybean oil. Rather, the existing processing plant bargaining unit is described by employees in the general job classifications of production and maintenance who work at a specific location or address. Thus, because the instant case does not involve the transfer of historic bargaining unit work to job classifications outside the bargaining unit and because the existing bargaining unit herein does not appear to be functionally described, *The Sun* is not the controlling Board law appli-

cable to the issues raised in this case. Accordingly, contrary to the assertion of the Union, the fact that employees in the existing bargaining unit and employees in the refinery may use similar job skills or perform work that requires a similar amount of training neither raises a presumption that the employees employed at the refinery should be included in the existing unit nor shifts the burden to the Employer-Petitioner to establish that it is inappropriate to include the employees in an overall bargaining unit.

2. Union's arguments regarding contractual recognition clause

The Union asserts that the 1994 alteration of the existing bargaining unit to include the address of the processing plant does not waive the Union's right to claim that employees employed at the new refinery are an accretion to the bargaining unit. In addition, the Union appears to argue that the intent or effect of the inclusion of a specific address in the recognition clause was to give rise to an inference that the parties intended any new operations that may come into existence on the property described in 1994 as 200 West 19th Avenue to be included in the existing bargaining unit. As the refinery is located on property that was in 1994 included within the boundaries of 200 West 19th Avenue, the Union claims that there is a presumption that the refinery employees should be included in the existing bargaining unit and that the criteria announced in *Sun* should apply rather than the historical Board approach to accretion.

Initially, in agreement with the Union, I find that the 1994 inclusion of the address in the contractual recognition clause did not act as a waiver of any rights of the Union, including the right to assert that the refinery employees constitute an accretion to the existing bargaining unit. However, contrary to the Union, I find that the 1994 addition of the address to the recognition clause did not afford the Union the right to represent employees outside the established processing plant bargaining unit and did not give the Union the right to represent employees at future operations on the property. The Union acknowledges that in 1994, when the address was included in the contractual recognition clause, the parties did not discuss the matter and there is no evidence that the parties ever discussed, let alone agreed upon, the inclusion of employees of new operations in the existing bargaining unit. Even if the parties had reached such an agreement, its legal effect is doubtful. Finally, the inclusion of the address in the recognition clause does not, as a matter of law, give the Union enhanced rights to represent employees at new operations that may be added at that address. Just as the 1994 insertion of an address in the contractual recognition clause does not act as a waiver of the Union's rights to claim accreted or relocated operations at another address, it does not operate as an extension of or grant of any right to the Union to represent future employees or future operations. Accordingly, for the reasons set forth above, I reject the Union's assertion that the language of the contractual recognition clause describing the existing processing plant bargaining unit requires that the analysis set forth in *Sun* be applied herein.

3. Conclusion

In applying the established Board law to the instant factual situation, it is clear that the employees employed in the refinery constitute a separate appropriate bargaining unit and lack a sufficient community of interest with the processing plant employees to compel their inclusion in the established bargaining unit. In this regard, there is no interchange of employees between the two facilities; no common supervision; employees of the two facilities have no contact with each other in the performance of their job duties; the employees work in completely different physical areas; and the terms and conditions of employment of employees at the two facilities differ. In addition, although the facilities are located in geographic proximity to each other, each facility is a distinct operation that is functionally separate and independent of the other, and could be operated without the existence of the other facility.

Inasmuch as employees at the two facilities are clearly separate appropriate bargaining units, and in view of my finding that the employees in the refinery are not an accretion to the existing bargaining unit of employees employed at the processing plant, it is not necessary to address whether the Union waived or acquiesced in the exclusion of the refinery employees from the bargaining unit by not pursuing the matter through the contractual grievance-arbitration procedure, raising the issue during the recent contract negotiations, or taking other timely action.

For the reasons set forth above, I shall grant the petition to clarify the existing bargaining unit of processing plant employees employed at the 200 W. 19th, North Kansas City, Missouri, facility to exclude employees employed at the refinery located at 80 W. 18th, North Kansas City, Missouri.

ORDER

It is ordered that the Employer-Petitioner's petition for unit clarification is granted, and the bargaining unit of employees employed at the Employer's soybean processing facility located at 200 W. 19th Avenue, North Kansas City, Missouri is hereby clarified to exclude employees employed at the Employer's soybean oil refinery located at 80 W. 18th Avenue, North Kansas City, Missouri.